

COMMONWEALTH OF MASSACHUSETTS  
Division of Administrative Law Appeals

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LISA COSTANZO  
*Petitioner*

Docket No. CR-21-0385

v.

Date: November 3, 2023

BOSTON RETIREMENT BOARD  
*Respondent*

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**Appearance for Petitioner:**

Lisa Costanzo, *pro se*

**Appearance for Respondent:**

Edward McKenna, *Esq.*

**Administrative Magistrate:**

Eric Tennen

**SUMMARY OF DECISION**

The Petitioner worked for the Boston Health Commission in a part-time position. A Boston Retirement Board rule allows someone who provides part-time service full credit only if they have always worked in a part-time position. The Board determined that the Petitioner’s entire service should be prorated because it claimed she went from providing service in a part-time position to providing service in a full-time position. In addition to doubting the Rule was intended to apply in this way, the facts establish that the Petitioner always worked in a part-time position. Whatever reference various employment documents made to “full time” was only to assist the Board in calculating her salary.

**INTRODUCTION**

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Lisa Costanzo, timely appeals a decision by the Respondent, the Boston Retirement Board (“BRB”) pro-rating her part-time service. The parties jointly agreed to waive a hearing and submitted their written submissions, and exhibits,

on September 29, 2023.<sup>1</sup> The Petitioner submitted 8 exhibits, which I now enter into evidence. After these submissions, I asked the parties to submit additional documentation explaining when the Petitioner became a member of the BRB and what prompted the Board’s action in this case. The Petitioner then submitted one additional exhibit without objection on October 13, 2023. I admit that as Exhibit 9. I also admit the BRB’s denial letter and mark it as Exhibit 10.

### **FINDINGS OF FACT**

Based on the exhibits, I find the following facts:

1. The Petitioner has been an active member of the BRB since 2003. (Exs. 1 & 9.)
2. She began as a Graphic Designer at the Boston Public Health Commission. Initially, she worked 20 hours per week. (Ex. 1.)
3. There are several Personnel Action Forms (“PAFs”) submitted as exhibits. Although there is no direct explanation of what they are, I deduce they are used to document a change in employment status. The PAFs in evidence show, among other things, when the Petitioner was hired and when her hours, job title, or salary changed.<sup>2</sup> (Exs. 2-3.)
4. For example, they document her job title changes over the years from “Graphic Designer” to “Assistant Director, Marketing,” then “Associate Director, Marketing Communications,” and finally “Creative Director.” (Exs. 2-8.)

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<sup>1</sup> The Petitioner submitted an affidavit along with her exhibits. The Board objected to the affidavit and asked me to strike it. I indicated that the remedy to the Board’s objection was not to strike the affidavit but, rather, a hearing. Alternatively, the Board could withdraw its objection, or the Petitioner could withdraw the affidavit. In the end, true to her desire to waive a hearing, the Petitioner withdrew her affidavit and agreed to proceed on the paper submissions. I have marked her withdrawn affidavit for identification as ID A.

<sup>2</sup> The PAFs also document some changes irrelevant to this case, such as a change in the percentage of her salary that was paid by different departments. (Exs. 2-4.)

5. The number of hours the Petitioner worked per week also changed over time from 20 to 30 and eventually to 32 hours a week. These changes are reflected in the PAFs. (Ex. 2.)
6. The PAFs describe her job as “hourly part-time” until 2006, at which point it changed to “salaried part-time.” (Exs. 2-4.)
7. When her job was “hourly part-time,” the PAFs listed her amount of pay by the hour. When it switched to “salaried part-time,” her pay was calculated based on prorating a full-time salary for the same position. (Exs. 2-4.)
8. In addition to PAFs, the parties submitted various job descriptions.
9. The job description creating her position in 2003 lists the hours as “20 hours/week; schedule tbd; occasional nights and weekends.” The salary was “\$20.00 - \$22.00 hourly range.” (Ex. 8.)
10. The 2006 job description lists the hours as “35 hours/week. 9-5. M-F, occasionally nights and weekends.” The salary ranges was \$48,000-\$54,000 (a year). (Ex. 8.)
11. There are two undated<sup>3</sup> job descriptions changing her title and some duties, but they do not list a salary range or weekly hours. (Ex. 8.)
12. The 2006 PAF indicated she worked 30 hours a week. It calculated her pay based on prorating a job in which someone worked 7.5 hours a day, five days a week, with a full-time annual salary of \$54,000. (Exs. 2 & 4.)
13. Starting in 2007, the PAFs indicate she worked 32 hours a week. Her pay was calculated based on a full-time annual salary of \$56,500. (Ex. 2.)

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<sup>3</sup> Based on the job titles, and cross-referencing them with the PAFs, it is clear they post-date 2006.

14. Her pay was adjusted again in 2008, and then 2012, based on higher full-time salaries.

(Ex. 2.)

15. Throughout the Petitioner's tenure, BRB Rule 2000-5 has been in place. The regulation, in its entirety, reads as follows:

**Rule 2000-5: Retirement Credit For Service Rendered As A Part-Time Member – Effective January 26, 2001**

(1) A member whose entire service is in a part-time position shall receive one year of creditable service for each year worked provided the member works the number of hours required by the position held.

(2) A member employed on a part-time basis who becomes full-time shall receive credit for his part-time service on a pro-rated basis as it relates to a full-time position.

(3) A member employed on a full-time basis who becomes part-time shall receive credit for his part-time service on a pro-rated basis as it relates to a full-time position.

(4) Part-time membership service performed on or before November 21, 2000, shall be credited with full-time service. Thereafter, all part-time service shall receive credit in accordance with the rules stated in this regulation.

16. In anticipation of her possible retirement, in 2021, the Petitioner communicated with the BRB about her creditable service. (Ex. 9.) The BRB took the position that her entire service while working for the Public Health Commission should be prorated. Citing Rule 2000-5, it explained its decision:

The position(s) you held were full time positions in which you were allowed to work a 4-day work week, first at an hourly pay rate and subsequently at a pro-rated salary. The job itself is a full-time position. This is borne out clearly in the 2006 job posting in which the hours are listed as “35 hours/week. 9-5. M-F, occasionally nights and weekends.” Therefore, the position itself is a full-time position as the listing itself required 35 hours/week, etc. A position such as a lunch monitor or bus monitor works 4-5 hours per day, but receives full creditable service because that is all the number of hours the **position requires**.

(Ex. 10) (emphasis in original.)

## DISCUSSION

Rule 2000-5 contains various terms. It speaks of members employed on a part-time basis or full-time basis, working in part-time and full-time positions, and providing part-time or full-time service—none of which are defined. It then sets out three scenarios in calculating part-time, creditable service. Under the first scenario—in which someone has always worked in a part-time position and worked the required hours—a member receives a year of creditable service for every calendar year worked. *See* Rule 2000-5(1). Under the two other scenarios, each of which involves some period of full-time work, the member receives prorated credit for their part-time service. *See* Rule 2000-5(2)-(3). Section 4 explains that the regulation is not retroactive: all part-time service before 2001 is credited as full-time; but any part-time service after that is supposed to be captured under sections 1-3.

There is some agreement. Both parties agree the Petitioner has always worked on a part-time basis—though neither the rule nor the parties define how many hours a member would have to work to reach a full-time basis. Suffice it to say, they agree that working 32 hours a week is not full-time.<sup>4</sup>

However, although the Petitioner always worked on a part-time basis, the Board says she did not always work in a part-time position. It argues that around 2006, her position went from a

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<sup>4</sup> “Part time” is not defined under Massachusetts law nor by the Board’s rule. *See Gorski v. MTRS*, CR-18-544, \* 6, 2022 WL 16921432 (DALA Feb. 3, 2022). Some regulations specifically define how many hours equal full-time work. *See. e.g.*, Newton Retirement Board, Supplemental Regulation Aug. 12, 2022 (20 hours a week considered full-time employment); Adams Retirement Board, Supplemental Regulation Oct. 2, 2022 (30 hours a week considered full-time employment); *compare and contrast Proulx v. Wellesley Ret. Bd.*, CR-15-079, \* 9 (DALA Apr. 17, 2018), *affirmed in part by CRAB* (Apr. 5, 2021) (Full time employee works either 35 or 40 hours a week, depending on the class of employee). Because the BRB’s regulations are silent on this point, and the parties agree that the Petitioner’s 32 hours a week was not full-time service, I accept that position in this case.

part-time position to a full-time position. Thus, according to the Board, she went from working on a part-time basis in a part-time position to working on a part-time basis in a full-time position. The Board's argument seems to be that a full-time position is one that is scheduled for full-time hours. Because of this, the Board concludes that she did not work all the hours required by her now full-time position. Put another way, the Board says her job required her to work 35 (or maybe 40)<sup>5</sup> hours a week, but she worked only 32 hours a week. Because working all those hours "was required," she is not entitled to full credit under 2000-5(1).

I am dubious that the Rule meant to draw such a fine distinction between part-time "basis" and a part-time "position." To the extent these represent different concepts, it is likely the Rule intended both terms to be covered under section 1, so that it really reads as follows: "A member whose entire service is [on a part-time basis] shall receive one year of creditable service for each year worked provided the member works the number of hours required by the position held." However, because the Board makes the argument it does in this case, I will address it. There are two sources of evidence the Petitioner's position in fact switched from a part-time to a full-time basis: the PAFs and the 2006 job description. Neither is convincing.

Start with the PAFs. Around 2006, the Health Commission chose, for whatever reason, to transition from hourly pay to annual pay. It used a yearly salary and five-day work week to calculate the Petitioner's prorated portion. But nothing in the PAFs establish that the Petitioner

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<sup>5</sup> The Board argues that her job jumped from requiring 35 hours a week in 2006 to 40 hours a week after 2008. The Board's argument is based on the data in the PAFs. For example, the 2007 PAF says her work schedule is 7.5 hours a day, four days a week whereas subsequent PAFs say her work schedule is 8 hours a day, four days a week. Based on a five-day work week, that would translate to 37.5 and 40 hour weeks, respectively.

was working in a full-time position. In fact, the PAFs always described her position as either “hourly *part-time*” or “salaried *part-time*.”

The 2006 job description, indeed all the job descriptions, provide equally vague evidence. It is not clear why they were created and what use they have. They appear to be necessary, at most, as a bureaucratic step in changing the Petitioner’s titles and responsibilities. On this record, the 2006 job description does not carry any weight as a document that defines whether someone is working a part-time or full-time position. At most, one job description (out of the four) indicates the job requires someone to work 35 hours a week. Yet nothing explains why 35 hours a week is considered a full-time position other than an unsupported statement by the Board in its appeal letter.

Perhaps the Commission and the Petitioner had an oral agreement about her job parameters; perhaps the Petitioner was not even aware the Commission created a job description; or perhaps there is some other explanation. The record does not clarify this. But I also need not accept the Board’s assertion that her job changed so consequentially because one job description said it required 35 hours a week. That conclusion is wholly unsupported by this record.

Therefore, I find that the Petitioner has never worked in a full-time position. She has always worked on a part-time basis in a *part-time position*—a position that began with her and was adjusted over the years to meet her and the Commission’s needs. The hours required of her have always been the hours the Commission intended her to work—the ones listed in her PAFs. There is no dispute the Petitioner worked these hours.

In any event, the Board cannot prevail even under its own application of the Rule. The Board prorated the Petitioner’s hours based on the assumption that she does not fall under Rule 2000-5(1). But if she does not fall under section 1, which section governs? Section 2 speaks

about a member employed on a part-time basis becoming full-time and section 3 is about a member employed on a full-time basis becoming part-time. Neither of those capture the Petitioner’s situation because she always provided only part-time service. And the Board does not argue otherwise. So, if she does not fall under sections 1-3, then what? Section 4 says all part-time service after 2000 will be calculated by Rule 2000-5, which simply sends us back to sections 1-3—none of which seem to apply.

What happens when a when none of the sections of the local regulation apply to a member’s situation? The Board simply declares her hours are prorated. But “[r]etirement boards are not authorized to prorate part-time service outside of an approved rule or regulation.” *Holt v. Cambridge Ret. Bd.*, CR-10-593, \*12 (DALA Mar. 27, 2015), quoting *Gallagher v. CRAB.*, 4 Mass. App. Ct. 1, 11 (1976). Rather, “if a proration regulation does not include a particular position, the retirement board cannot prorate and must give full credit for that position’s membership service, not the other way around.” *Murphy v. Falmouth Ret. Bd.*, CR-20-0453, 2023 WL 5528749 (DALA Aug 18., 2023).<sup>6</sup>

### CONCLUSION AND ORDER

The Petitioner is entitled to full credit for her service. The Board’s decision prorating the Petitioner’s service is **reversed**.

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<sup>6</sup> There are probably very few scenarios in which at least one section of Rule 2000-5 will not apply to a member who has worked part-time. This case may be wholly unique. In any event, the Board may want to consider clarifying this rule—perhaps, at the very least, adding definitions for “part time,” “full time,” “service,” “basis” and “position.”



SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*Eric Tennen*

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Eric Tennen  
Administrative Magistrate

**APPENDIX**

**Newton Retirement Board, Supplemental Regulation Aug. 12, 2022**

A. Full-time Membership Service.

A Member who regularly works a minimum of 20 hours per week shall be considered full-time.

Members whose full-time position requires that they work on a 12-month basis shall receive one year of creditable service for each year worked, or yearly proportion thereof.

Members whose full-time positions require that they render service on a 10-month basis shall, for the periods they are employed for the full 10 months, receive one year of creditable service, or yearly proportion thereof calculated as one-tenth of a year for each full month of service rendered during the 10-month period.

Members whose full-time positions require that they render service on an 11-month basis shall, for the periods they are employed for the full 11 months, receive one year of creditable service, or yearly proportion thereof calculated as one-eleventh of a year for each full month of service rendered during the 11-month period.

B. Part-time Membership Service.

A member who is regularly employed in a permanent position fewer than 20 hours per week shall be considered part-time.

Members who render service on a part-time basis shall receive credit on a pro-rated basis as it relates to 20 hours per week.

**Adams Retirement Board, Supplemental Regulation Oct. 2, 2022**

**Definitions of Full and Part Time Service:**

Full Time Service – Service while an employee having established hours of work consisting of a minimum of 30 hours per week for 36 weeks per year.

Part Time Service – Service while an employee having established hours of work consisting of less than 30 hours per week for 36 weeks per year.